

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

In re:	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	No. 17 BK 3283 (LTS)
As representative of	(Jointly Administered)
The Commonwealth of Puerto Rico, the Employee Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority	
Debtors	

**MOTION DIRECTING ISSUANCE OF CHECK**

**TO THE HONORABLE COURT:**

By counsel, Oscar Adolfo Mandry Aparicio; María del Carmen Amalia Mandry Llombart; Selma Verónica Mandry Llombart; María del Carmen Llombart Bas; Oscar Adolfo Mandry Bonilla; Gustavo Alejandro Mandry Bonilla; Yvelise Helena Fingerhut Mandry; Margaret Ann Fingerhut Mandry; Victor Robert Fingerhut Mandry; Juan Carlos Esteva Fingerhut; Pedro Miguel Esteva Fingerhut; Mariano Javier McConnie Fingerhut; Janice Marie McConnie Fingerhut, Victor Michael Fingerhut Cochran; Michelle Elaine Fingerhut Cochran; Rosa Estela Mercado Guzmán; Eduardo José Mandry Mercado; Salvador Rafael Mandry Mercado; Margarita Rosa Mandry Mercado; Adrián Roberto Mandry Mercado members of the estate of Pastor Mandry Mercado (hereafter collectively designated as “Sucesión Mandry Mercado”), respectfully state and request:

1. The members of Sucesión Mandry Mercado have an inverse condemnation final judgment in their favor against the Commonwealth of Puerto Rico (the “Commonwealth”) for \$30,496,000.00 plus costs and interest (the “Judgment”).

2. The Judgment was obtained in the Court of First Instance of Puerto Rico, Superior Section

of Ponce (the “Court of First Instance”) on August 9, 2019, as amended on December 19, 2019, in Case No. JAC-2008-0853 (the “State Court Case”).

3. While Javier Mandry Mercado is one of the members of Sucesión Mandry Mercado, he is not represented by the undersigned counsel. He has a participation of 3.1% in the Judgment.

4. As a result of the Judgment, on April 19, 2018, Sucesión Mandry Mercado filed Prime Clerk Proof of Claim number 6272 with the Court originally for \$30,000,000.00 and as a result of the amendment to the original judgment on August 31, 2021 modified the original claim to \$30,496,000.00 (Prime Clerk Proof of Claim Number 179550 (the “Claim”).

5. The Judgment was confirmed by Puerto Rico’s Court of Appeals (**ECF No. 18994**) and the Commonwealth’s petition for certiorari to Puerto Rico’s Supreme Court was denied thereby (**ECF No. 20459**), as well as the Commonwealth’s motions to reconsider such denial (**ECF No. 20528**).

6. Sucesión Mandry Mercado objected to the confirmation of the Commonwealth’s plan of adjustment (the “Plan”) because the Claim for the taking of its real properties without just compensation is based on the Takings Clause of the Fifth Amendment to the Constitution of the United States and the Plan proposed to treat the Claim as a general unsecured claim, impairing the same, when Sucesión Mandry Mercado is constitutionally entitled to be compensated for the full amount thereof, without impairment, reduction or adjustment by the Plan (**ECF Nos. 12701, 16481, 17062 and 17998**).

7. As held in the order confirming the Plan of January 18, 2022 (the “Confirmation Order”), the Claim is not dischargeable and must be fully compensated under the Plan pursuant to the Takings Clause (**ECF No. 19721**). The Plan’s Effective Date is March 15, 2022.

8. On January 28, 2022, the Commonwealth filed a notice of appeal to the United States Court of Appeals for the First Circuit (the “First Circuit”) from the Confirmation Order (**ECF No. 19938**).

9. On November 23, 2022, the First Circuit affirmed the Confirmation Order, concluding that the Constitution of the United States of America command that government pay property owners just compensation is not “a mere monetary obligation that may be disposed with by statute” and that the

government may not “eliminate [its] obligation to pay just compensation and instead pay only reduced amounts based on a formula applicable to most unsecured creditors”. Therefore, bankruptcy laws that otherwise secure creditor’s claims cannot impair or limit the right of property owners, as Sucesión Mandry Mercado, to their full compensation, specially when as in this case counsel for the Financial Oversight and Management Board for Puerto Rico explicitly advanced to the Court during the confirmation hearing that every just compensation claim can be paid without affecting the feasibility of the Plan. (See *In re Fin. Oversight & Mgmt. Bd.*, 54 F.4th 42, 2022 U.S. App. LEXIS 32496)

10. On October 17, 2022, the Commonwealth filed a petition for certiorari from the judgment of the First Circuit to the United States Supreme Court (the “U.S. Supreme Court”) (the “Petition for Certiorari”), which was denied by the U.S. Supreme Court on February 21, 2023. *Fin. Oversight & Mgmt. Bd. for P.R. v. Coop. de Ahorro y Crédito Abraham Rosa*, 143 S. Ct. 774 (2023)

11. Rule 16 (3) of the Rules of the Supreme Court of the United States provides “[w]henever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment was sought to be reviewed. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice”.

12. No petition for rehearing was filed by the Commonwealth with the U.S. Supreme Court as to its denial of the Petition for Certiorari during the term provided by Rule 44.2 of the Rules of the Supreme Court of the United States. Therefore, the judgment of the First Circuit and the Confirmation Order are final and firm pursuant to Rule 16 (3).

13. As of March 31, 2023, the amount due on the Claim, including interest and costs totals \$34,982,305.00, of which amount \$1,084,451.46 corresponds to Javier Mandry Mercado, for an amount due to the appearing members of Sucesión Mandry Mercado of \$33,897,853.96, with interest accruing on the \$33,897,853.96 after March 31, 2023 on the basis of \$4,237.23 per day. This amount includes computation of compound interest, as held by the Supreme Court of Puerto Rico in *Aut. Carreteras v.*

8,554.741 M/C II, 172 D.P.R. 1050 (2008) and the Puerto Rico Court of Appeals in *ACT de P.R. v. Rexach Hermanos, Inc.*, 2021 PR App. LEXIS 3383, regarding the rights of a party to compensation in eminent domain actions, since interest awarded is an integral part of the constitutional right to just compensation.

**WHEREFORE**, it is respectfully requested that the Commonwealth be ordered to issue a check forthwith to the order of Sucesión Mandry Mercado for \$33,897,853.96, plus the interest accrued thereon after March 31, 2023 on the basis of \$4,237.23 per day, in compliance with the Plan and the Confirmation Order, as per attached Proposed Order.

**CERTIFICATE OF SERVICE:** I hereby certify that on this date, I electronically filed the foregoing motion with the Clerk of the Court using the EM/ECF system, which will send a notification to all attorneys of record.

San Juan, Puerto Rico, this 5<sup>th</sup> day of April 2023

s/CHARLES A. CUPRILL-HERNÁNDEZ

**USDC-PR 114312**

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